

(Name of Provider):

State:

Mailing Address

Attn: _____

- 5.5 **Force Majeure.** Noncompliance with any obligations hereunder due to force majeure, such as acts of God, laws or regulations of any government, war, civil commotion, destruction of production facilities and materials, fire, earthquake or storm, labor disturbances, shortage of materials, failure of public utilities or common carriers, and any other causes beyond the reasonable control of the parties, shall not constitute breach of contract.
- 5.6 **Assignment.** Neither party shall have the right to assign this Agreement to a third party without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any permitted assignee shall assume all obligations of its assignor under this Agreement. No assignment shall relieve any party of responsibility for the performance of any obligations that have accrued prior to such assignment.
- 5.7 **No Waiver of Rights.** The failure of either party to insist upon the strict observation or performance of any provision of this Agreement or to exercise any right or remedy shall not impair or waive any such right or remedy in the future. Every right and remedy given by this Agreement to the parties may be exercised from time to time as often as appropriate.
- 5.8 **Entire Agreement.** This Agreement contains the entire agreement and understanding of the parties. This Agreement (including Attachments) may not be amended or modified except upon the written agreement of both parties.
- 5.9 **Governing Law.** This Agreement shall be governed by the laws of the State of Washington. In the event of a lawsuit involving this Agreement, venue shall be proper only in Thurston County, Washington.
- 5.10 **Effect of Future Laws.** In the event of the enactment, promulgation, rescission, modification or interpretation of any law or regulation after the date hereof which would (a) materially adversely affect the manner in which either party is obligated to perform under this Agreement, (b) adversely affect for either party the net prices or State Supplemental Rebates or other terms applicable under this Agreement, or (c) have the effect of requiring the net prices or State Supplemental Rebates or other terms applicable under this Agreement to be extended or offered to any third party, each party shall have the right to enter into good faith negotiation with the other in order to seek to agree on reasonable terms for maintaining the intent of the Agreement affected by such enactment, promulgation, etc. Agreement on any such terms shall be in the sole discretion of each party. If the parties do not agree within sixty (60) days of a party's written request for negotiations, either party may terminate this Agreement with respect to the affected Covered Products upon expiration of the sixty (60) day period, with immediate effect.
- 5.11 **Compliance with Law.** In connection with its respective obligations under this Agreement, each party shall comply with all applicable federal, state and local laws and regulations, including without limitation any disclosure or consent requirements.
- 5.12 **Authority.** State and (name of provider) each represent an warrant to the other that the person signing below has all requisite legal power and authority to execute this Agreement on behalf of each party and each party shall thereby be bound.

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- 5.13 **Best Price Contingency.** The effectiveness of this Agreement shall be contingent on (name of provider's) Best Price and AMP not being affected by State Supplemental Rebates.
- 5.14 **CMS Approval Contingency.** The effectiveness of this Agreement shall be contingent on receipt of CMS approval by State, as evidenced by the CMS Approval Letter, attached hereto as Exhibit C and incorporated by reference.

IN WITNESS WHEREOF, this Agreement has been executed by the parties set forth below:

(Name of Provider)

**State of Washington Department of
Social and Health Services**

Name

Name

Title: _____

Title: _____

Date: _____

Date: _____

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ATTACHMENT A

Covered Products

The products to which this Supplemental Rebate Agreement shall apply are the following:

NDC	Brand	Strength	Package Description

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ATTACHMENT B

New offer is for net cost for exclusive preferred drug_____

New offer is for net cost for one of two preferred drugs_____

New offer is for net cost for one of three preferred drugs_____

New offer is for net cost for reference pricing_____

Rebate Formula

Supplemental Rebate shall be calculated on a calendar quarter basis according to the following formula and will be lower than or equal to the net cost of the Competitive Product for reference pricing:

Supplemental Rebate = (ⁱIngredient Reimbursement) - (ⁱⁱCMS Rebate) - (Net Cost)

(_____QuarterYear) net cost for (name of product):

Net Cost for (name/dosage of product) = (price)

Net Cost for (name/dosage of product) = (price)

ⁱ Ingredient Reimbursement based on the Average Wholesale Price (AWP) as published by First DataBank on the first day of a calendar quarter for the quarter in which the rebate applies;

ⁱⁱ CMS Rebate as calculated and provided to State by CMS on a calendar quarter for the quarter in which the rebate applies.

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ATTACHMENT C
CMS Approval Letter

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